IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 13798 of 2003
For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVENDA MOHANLAL SALVI

Versus

EXECUTIVE ENGINEER DEESA IRRIGATION DIVISION

Appearance: MR BG JANI for Petitioner Nos. 1-3
Ms.Manisha Lavkumar, Assistant GOVERNMENT PLEADER, for Respondent Nos. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/11/2003

ORAL JUDGEMENT

Rule. Ms.Manisha Lavkumar, learned AGP, waives service of rule on behalf of the respondents.

By filing this petition, the petitioners have challenged the order passed by the Executive Engineer, Deesa Irrigation Department, Deesa, by which each of the petitioners is directed to repay certain amount as per the aforesaid order. The allegation against the petitioners is that even though there is a Circular of the State Government dated 17.10.1988, by which there is a restriction to appoint Rojamdar, the present petitioners appointed one person as a Rojamdar contrary to the said Resolution, and, ultimately, the said

employee has demanded permanency from the State Government. At this stage, the Executive Engineer realised that the present petitioners have recruited the aforesaid person contrary to the aforesaid G.R. of the Government. Under the circumstances, it was decided to recover Rs.1,25,005.45 in all and each of the petitioners is ordered to pay Rs.41,846.66 towards the recovery of the said amount. The said order is impugned in the present petition.

At the time of hearing of this petition, it is argued by Mr.Jani, learned Advocate for the petitioners, that before passing the aforesaid order, the petitioners were not given any opportunity of hearing and, therefore, the said order is against the principles of natural justice. Mr.Jani also tried to justify the appointment order given by the present petitioners to the said Rojamdar, in the year 1990, on merits.

The learned AGP, on the other hand, has submitted that in spite of the G.R. of the Government dated 17.10.1988, the present petitioners were instrumental in giving wrong appointment order to the said Rojamdar with the result that the Government was subjected to financial loss. It is submitted that the action of the State Government is absolutely justified, though, on the question of hearing, it is conceded by the learned AGP that, of course, the petitioners were not heard before passing the impugned order.

Considering the fact that the impugned order at Annexure 'A' is passed without entering into the merits of the case and without affording an opportunity of hearing to the petitioners, the order is required to be set aside only on the ground of not giving opportunity of being heard to the petitioners. It would be open for the Executive Engineer to pass appropriate order after hearing the present petitioners. It is clarified that this Court has not expressed any opinion on the merits of the issue and it is for the Executive Engineer to consider the facts and circumstances of the case, and after considering the say of the petitioners, appropriate order in accordance with law may be passed. Till the fresh decision is taken, further recovery may not be effected from the petitioners and if any amount is recovered, the same shall be subject to the final decision of the Executive Engineer in this behalf. The Executive Engineer may accordingly hear the petitioners and take appropriate decision as early as possible, and, in any case, within a period of two months from today. Till such decision is taken further recovery may not be

effected from the salary of the petitioners.

The petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute to the aforesaid extent. No cost.

3rd November, 2003 (P.B. Majmudar, J.)

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(apj)